



**COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER**

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J. TYLER McCAULEY
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December 8, 2005

TO: Mayor Michael D. Antonovich
Supervisor Gloria Molina
Supervisor Yvonne B. Burke
Supervisor Zev Yaroslavsky
Supervisor Don Knabe

FROM: J. Tyler McCauley
Auditor-Controller

A handwritten signature in black ink, appearing to read "J. Tyler McCauley", is written over the printed name and title.

**SUBJECT: HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT
(HIPAA) PRIVACY COMPLIANCE STATUS REPORT**

This report is collateral to the monthly status reports submitted to your Board by the Chief Information Office (CIO) regarding compliance activities with the Health Insurance Portability and Accountability Act (HIPAA) Security Rule. My report focuses on the County's progress in implementing and complying with HIPAA's Privacy Rule, which is the responsibility of the Chief HIPAA Privacy Officer in the Auditor-Controller.

Although the County is close to full compliance, there are challenges related to the complexity of implementing the mandates of the program that require ongoing assessment coupled with the enormous task of providing employee training. Nonetheless, our goal remains to further enhance the program through increased awareness and compliance reviews of the Covered Entity Hybrid departments, which are: the Department of Health Services, Department of Human Resources (flexible spending account component), Department of Mental Health, Department of Probation (Kirby Center), and the Department of Sheriff (pharmacy component). In addition to the Hybrid departments, there are Memorandum of Understandings' (MOU's) departments and Business Associate agreements with numerous vendors that require some form of compliance monitoring pursuant to the HIPAA regulations.

Yet, to further complicate compliance, the U.S. Department of Health and Human Services' Office for Civil Rights' (OCR) standards for privacy of individually identifiable health information and standards for the protection of electronic protected health information are seemingly fluid even though the Privacy Rule compliance date was

April 14, 2003 and the Security Rule compliance date was April 21, 2005. Once case law is established, we will have a better feel for the standards and expectations of OCR.

HIPAA Privacy Compliance Reviews

Because of HIPAA awareness, the number of privacy complaints submitted to OCR, as well as to the County of Los Angeles' Auditor-Controller Privacy Officer (AC-CPO) or directly to County departments increased significantly since my last report.

During this reporting period, my AC-CPO conducted reviews of DHS' Martin Luther King Medical Center, Olive View Medical Center, Health Services Administration, Rancho Los Amigos National Rehabilitation Center, LAC+USC Medical Center, Whittier Public Health Center, Harbor-UCLA Medical Center, Ingleside Medical Center, El Monte Health Center, Hollywood Mental Health Center, Asian Pacific Mental Health Center (a business associate), and Mental Health Administration. The results are detailed in the attached reports. Attachment 1 is the Privacy Rule Complaints and Investigations' report and Attachment 2 is the Security Rule Audits and Investigations' report.

In view of the Privacy Rule, our findings show these facilities are mostly compliant; however, ongoing attention is required by the AC-CPO. Some of our investigations identified valid and sensitive privacy issues that point to the need for further administrative training in the area of policies and procedures. County Counsel and related departments' management are involved with resolving these concerns.

Enforcement and Penalties for Noncompliance

Consistent with the principles for achieving compliance provided in the rule, OCR seeks the cooperation of covered entities and may provide technical assistance to help them comply voluntarily with the Privacy Rule. Covered entities that fail to comply voluntarily with the standards may be subjected to civil penalties and/or criminal prosecution.

As of the date of this memorandum, the County has not been subjected to civil penalties or criminal prosecution. Those certain facilities noted above and investigated by my AC-CPO for alleged HIPAA violations have voluntarily complied and/or initiated mitigating efforts to correct any infractions to the Privacy Rule.

Activities in Response to Hurricane Katrina

Thousands of evacuees from areas affected by Hurricane Katrina caused an influx of people into the Southern California area who need government assistance. As a result, the Department of Public Social Services is tasked with coordinating the delivery of County-wide services to the hurricane victims. To best serve these clients, it was crucial that certain departments share Protected Health Information (PHI) on a newly developed patient/client tracking system.

As such, my HIPAA Compliance Unit, in collaboration with the Chief Information Office, Internal Services Department, Department of Health Services, Department of Mental Health, and County Counsel provided oversight in the deployment and use of the new information technology system to ensure adherence to HIPAA regulations and County information security policies while providing secure access to PHI.

Summary

The County's HIPAA Privacy Program continues to increase awareness of health privacy issues as it relates to both health care providers and health plans. Primarily due to the impact of the Privacy Rule, members of the health care community are more sensitive to protecting their patients' health information. All HIPAA impacted departments are encouraged to keep a strong vigilance regarding Privacy and Security mandates to ensure the County continues to improve and enhance its compliance efforts.

The next semi-annual report is expected to be submitted in May 2006. However, if circumstances warrant earlier reporting, we will submit a report(s) on an as-needed basis. If you have questions or require additional information, please contact me at (213) 974-0383, or your staff may contact Linda McBride at (213) 974-2166.

JTM:WW:LTM
I:\HIPAA\2005-11-30 Privacy Compliance Status Report May 05 – Oct. 05

Attachments (2)

c: Raymond Fortner, County Counsel
Stephanie Farrell, Deputy County Counsel
Jon Fullinwider, Chief Information Officer
Alan Brusewitz, Chief Security Officer, Chief Information Office
Dr. Thomas Garthwaite, Director, Department of Health Services
Michael J. Henry, Director, Department of Human Resources
Paul Higa, Chief Probation Officer
Dr. Marvin Southard, Director, Department of Mental Health

County of Los Angeles
Department of Auditor-Controller
HIPAA Privacy Rule Complaints and Investigations Report

Origination Date	Department	Resolution Time	Complaints Recorded	Action	Status
5/16/2005	Health Services, Martin Luther King Medical Center	60 Days	The Office for Civil Rights (OCR) commenced an investigation pursuant to a complaint submitted by a patient representative who alleged that 20 medical files were released to two outside physicians which is a potential violation of the Privacy Rule.	The CPO opened an investigation. It was discovered that the physicians were consultants of a business associate. The purpose for releasing the information was for accreditation evaluation. According to the Privacy Rule, covered entities are permitted to disclose PHI for healthcare operations as "conducting quality assessment and improvement activities," (Section 164.501). OCR was informed of said stated exception to the Privacy Rule. Hence, on July 5th, the CPO received a letter from OCR stating that no violation of the HIPAA laws occurred. This case is now closed.	Closed
6/30/2005	Department of Mental Health, Hollywood Mental Health Clinic	30 Days	Patient alleged DMH denied access to his medical records, and patient does not consent to Hollywood Mental Health Center share his PHI with other DMH clinics.	The CPO opened an investigation and worked with DMH's Office of Patients Rights. A response to the allegation was mailed to the complainant on July 28, 2005. No facts of the allegations were substantiated; however, HIPAA awareness training and continued education was recommended to DMH staff.	Closed
6/30/2005	Department of Mental Health, Asian Pacific Clinic	120 Days	Patient alleges that Asian Pacific has denied access to his medical records. (Asian Pacific is a contract clinic.)	The CPO opened an investigation and is working with DMH's Office for Patients' Rights. Because Asian Pacific is a Business Associate, the complaint was referred to their privacy officer. This complaint is currently under investigation by OCR. The CPO responded to all allegations presented by OCR and we await their response. Note regarding OCR - there is a backlog of cases and OCR's response time is approximately 120 days.	Open
7/1/2005	DMH's Clinics	On-going	DMH's privacy advocate is currently working on various complaints.	DMH's Office for Patients' Rights continues to coordinate efforts with the CPO and County Counsel on various HIPAA issues which are under investigation. Certain issues may go to DMH's review board. This is an ongoing matter.	Open
7/11/2005	Olive View Medical Center	30 Days	Patient alleges that PHI was discussed between patients and their physicians in a public area where other patients could hear diagnoses, treatment, and medications prescribed.	The CPO opened an investigation and coordinated with Olive View's Security Officer to ensure that HIPAA regulations are being followed.	Closed
7/15/2005	Department of Mental Health	60 Days	Email communications regarding PHI forwarded from a Congress Member's Office to DMH regarding expediting a patient's application for eligibility for certain mental health services. Issues regarding PHI are involved with the handling of the information.	County Counsel, DMH, CIO, and the CPO, worked on potential HIPAA security issues that arise from sending PHI via email from one agency to another. Currently, the CIO hired a consultant to prepare a gap analysis that will address this and other electronic security HIPAA issues. DMH does not have a policy on ePHI. This issue is under review and the CIO and CPO are adopting policy in accordance with HIPAA regulations. However, this incident is now closed.	Closed

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Origination Date	Department	Resolution Time	Complaints Recorded	Action	Status
7/18/2005	Health Services Administration	45 Days	Body parts, remains, caskets, and medical records were unearthed on property previously owned by the County and subsequently sold to the MTA for their Gold Line project.	Medical records were found at the crematorium, which early in the investigation it was unclear as to whether DHS improperly disposed the records. DHS contacted the CPO and requested advise on how to handle the medical data. The CPO informed DHS that an archeologist is required due to potential sacred and historical burial ground issues. The Coroner and Sheriff were contacted. County Counsel and the CPO advised DHS not disclose any information and/or the cause of death as it is PHI. County Counsel, advised DHS to treat the medical records in accordance with the HIPAA Privacy Rule. The CAO's Real Estate Division coordinated with the MTA; County Counsel coordinated with the First District and DHS; and the CPO coordinated with all the above. The MTA archeologist confirmed that the remains date back to the 19th century. DHS is unclear as to whether any records were unearthed in addition to those found at the crematorium. County Counsel and the CPO determined that HIPAA does not apply, because the records were produced prior to the HIPAA compliance date of April 14, 2003 and the crematorium has custody of the records. Note, the crematorium is not a member of the Hy	Closed
7/19/2005	Department of Mental Health	30 Days	A DMH Doctor submitted a complaint regarding HCCS's HIPAA training program and problems with the computer due to a handicap in her arm.	The CPO referred the doctor to DMH's Privacy Officer and training coordinator.	Closed
7/20/2005	Department of Health Services	60 Days	Anonymous complaint was received by mail regarding Rancho Los Amigos Medical Center and its Claims Dept. The letter stated that claims are stored in the basement and is accessible to everyone, and some claims are in boxes while some are not and some are scattered on the floor.	The CPO opened an investigation. On August 4th, the CPO visited the site and determined that there were no HIPAA violations as to the storage of medical records at this location. This case is now closed.	Closed

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Origination Date	Department	Resolution Time	Complaints Recorded	Action	Status
7/28/2005	Department of Mental Health	90 Days	The CPO received a letter from the Office for Civil Rights that they received a complaint from a DMH client who alleged several HIPAA violations occurred at Hollywood Mental Health Clinic.	The CPO opened an investigation and is working with DMH and their Office of Patients Rights on the preparation of a response to OCR. This complaint is linked to other Hollywood Mental Health compliance issues. On August 17th, a meeting was held at DMH to discuss policy and procedures as they relate to the OCR case and allegations. On August 26th, DMH provided the CPO with a response to each allegation. On September 6th, the CPO responded to OCR. We are awaiting for OCR to reply.	Open
7/28/2005	Department of Health Services	60 Days	A complaint regarding a Glendale Dental Office and the staffs' lack of privacy compliance.	The CPO opened an investigation. The CPO determined that the dental office is not affiliated with the County. The CPO referred the complainant to OCR.	Closed
8/18/2005	Department of Mental Health	30 Days	DMH contacted the CPO regarding an individual who is impersonating a DMH employee in order to gain access to a medical record.	The CPO opened an investigation in conjunction with DMH and County Counsel. In addition, the CPO and County Counsel referred DMH to the Sheriff as impersonating another is a crime. This case is now closed.	Closed
8/22/2005	Department of Mental Health	60 Days	A patient filed a complaint against DMH stating that her medical record was released to the Department of Real Estate (a State agency). The patient also alleges that the information in the record is inaccurate and wishes to amend.	The CPO opened an investigation and met with the complainant on August 24th to review her records and discuss the allegations. A "Request to Amend Medical Record" form was provided and she filled-out the 3 page form, but she did not sign it. So, the CPO mailed the form to the complainant for signature. Upon receipt of the fully executed form, the CPO will forward to DMH who has 30 days to review the request and respond. After the meeting, the CPO discussed the issues with DMH's Office of Patients Rights and Privacy Officer. There are other issues related to this complainant that involve her mental stability and propensity for harassing County staff. Hence, caution is heeded when dealing with this individual. As of November 22, 2005, no new activity occurred on this case; therefore, the CPO closed the case.	Closed
8/24/2005	Department of Health Services	30 Days	A DHS patient filed a complaint against El Monte Comprehensive Health Center alleging that there is an unreasonable delay in scheduling surgery for her. Approximately 3 weeks passed since her last visit and receipt of information regarding treatment. She believes this is unacceptable.	The CPO referred the case to DHS's Compliance Officer, Sharon Ryzak.	Closed

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Origination Date	Department	Resolution Time	Complaints Recorded	Action	Status
9/16/2005	Department of Health Services	45 Days	A patient filed a complaint against Health Services alleging that a student worker retrieved personal information from his medical records in order to contact him. The patient alleges that the student worker spoke to him only on a personal level and it did not involve any health information. He felt this was a breach in confidentiality and ethics and reported the incident to Public Health.	On October 11th, the CPO opened an investigation and met with DHS' Compliance Officer, Public Health representatives, and the Facility Administrator at Whittier Health Center to ensure that HIPAA policies are in place and that the facility staff is aware of the policies and safeguards needed to ensure this incident is not repeated. Although the student worker violated the patient's privacy, no protected health information was disclosed. The student worker acknowledged her wrong doing and was subsequently terminated. This case is now closed.	Closed
9/28/2005	Department of Health Services	90 Days	An allegation was reported to the L.A. County Fraud Hotline related to a HIPAA Privacy Rule violation. The alleged violation is regarding improper destruction of protected health information. As such, the complaint was forwarded to the HIPAA Division.	The CPO opened an investigation, and met with DHS' Compliance Officers and various Harbor-UCLA Medical Center staff. The allegation states that an attorney was digging through a trash bin located on hospital grounds and found several patients' PHI in paper format. According to the Privacy Rule, destruction of medical documents must be done in a manner that protects the confidentiality of PHI. DHS's policy states that discarded PHI must be shredded or placed in secured trash bin areas. At this meeting, it was discovered that a Business Associate (BA) improperly discarding the PHI. The CPO advised Harbor staff to immediately inform the Business Associate of the infraction, ask for emergency mitigation, cure the problem, request status reports of the remedial measures taken, and to respond back with corrective measures that shall be taken by the BA's workforce. The CPO is working with County Counsel on this issue and we are reviewing the Business Associate agreement in order to determine that proper HIPAA language is in the contract.	Open
9/28/2005	Department of Health Services	90 Days	DMH Patients Rights Division forwarded a complaint by one of their patients who alleged that during her stay at LAC+USC Med. Ctr., her treating psychiatry resident doctor notified the patient's father of her hospitalization. The patient is an adult.	The CPO opened an investigation and met with LAC+USC's Privacy Officer and resident doctor for explanation of the circumstances surrounding the alleged disclosure of PHI to the father. We believe this case will be investigated by OCR. As such, interviews with the doctor who the patient alleges violated the patient's privacy, and the doctor's supervisor were conducted on November 4th. The allegations were denied. Evidence shows that the father was in contact with LAPD who then gave the father information as to his daughter's whereabouts. DMH's Office for Patients Rights is also investigating this incident. The CPO requested DHS to respond in writing to the allegations.	Open
10/5/2005	Department of Health Services	60 Days	DHS patient called the HIPAA Hotline to complain about disclosure of PHI to credit agency.	The CPO forwarded a Privacy Incident Report form to the patient to complete and send back.	Open

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Origination Date	Department	Resolution Time	Complaints Recorded	Action	Status
10/11/2005	Department of Health Services	30 Days	OCR contacted the CPO to report an alleged that an intern at the Charles Drew Med. School disclosed a patient's PHI.	The CPO worked with OCR to gain additional information regarding the case. However, Charles Drew Med. School is not a covered entity of the County. Hence, the CPO referred the matter to the Med. School's privacy officer. No further action is required by the CPO. The case is now closed.	Closed
11/4/2005	Department of Mental Health	45 Days	DMH - Hollywood Mental Health wishes to limit a patient's right to access his medical records.	The CPO is working with DMH staff in developing a policy regarding a patient's ongoing request to have access to his medical records. The patient continues to request the same information and DMH provides such as required by the HIPAA Privacy Rule. However, the patient is now becoming a nuisance and disruptive; thus, under HIPAA regulations and approval by OCR, a policy is recommended to DMH to limit a patient's access to duplicate copies of PHI to no more than 3 times within a 12 month period. This is a guideline that is acceptable by OCR. The patient's right to complain and disagree with the policy remains in full effect.	Open
11/8/2005	Department of Mental Health	45 Days	DMH patient alleges that LAC + USC Medical Center - Inglewood Psychiatric Facility released PHI to the patient's father without consent.	The CPO opened an investigation and is working with DMH's Office for Patients' Rights. The patient is also under the care a conservator. The CPO met with various LAC+USC representatives to discuss the allegations, which were denied. The facility is to respond in writing denying all allegations. Until the facility responds to our request, this case will remain open.	Open
11/8/2005	Department of Health Services	30 Days	Patient alleges that LAC + USC Medical Center lost his medical record and x-rays.	The CPO contacted the Medical Center's Privacy Officer to inform them of the case and asked that they investigate the alleged incident. After an investigation was conducted, the allegations were determined as unfounded. The patient has other issues unrelated to HIPAA in which the Medical Center is addressing. This case is now closed.	Closed
11/10/2005	Department of Mental Health	45 Days	OCR advised this Office that they received a complaint by a DMH patient alleging that Hollywood Mental Health has denied him access to his medical records, and has retaliated against him as a result of filing a previous HIPAA complaint.	The CPO opened an investigation and is working with DMH's Office for Patients Rights and Privacy Officer. A meeting is scheduled for December 1st. with Hollywood Mental Health to discuss the allegations. This complaint relates to the Hollywood Mental Health issues stated above in this report.	Open

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HIPAA Security Rule Audit Report

Origination Date	Department / Facility	Audits	Action	Status
February 2004	DMH Edmund D Edelman Westside Mental Health Center	The excessive storage of paper-based health records and charts continues to be a concern. The facilities are increasing their risk of unauthorized disclosure of PHI and have an increased administrative burden for managing outdated records since there is no formal policy in which to destroy outdated health records. As presented during the February 5, 2004 Preliminary HIPAA Privacy Review, the archived storage of PHI needs to be addressed such that the facilities have a clear policy and procedure in which they can appropriately destroy paper-based PHI that no longer requires maintenance.	In February 2004, it was recommended that DMH expeditiously draft and approve a policy and procedure for destroying outdated paper-based health records and charts. To date, the policy has not been drafted. As of November 30, 2005, DMH has not provided updated information. The CPO will continue to request updates.	OPEN
February 2004	DMH Edmund D Edelman Westside Mental Health Center	There were 26 identified computer monitors that presented PHI and were visible to patients. The Program Head mentioned that approximately 65 privacy screens were requested, but none were approved.	In November 2005, DMH reported the prior request was not approved or completed. DMH is going to reorder 26 privacy screens and track the purchase closer to ensure completion. The CPO will follow up in one month.	OPEN
April 2004	DHS Headquarters	The current Minimum Necessary Policy was deemed to be ineffective since it creates a redundant administrative burden on the hospital to re-create and redefine role-based access schemes that ensures that its workforce has the proper level of access to protected health information (PHI). Harbor was able to demonstrate that they have existing policies and procedures that meet this requirement.	DHS was previously expected to revise its policy by November 1, 2004. However, it opted to simply provide references to the applicable existing policies that detail how the Minimum Necessary program is managed. DHS is expected to provide a per hospital/agency status in May, 2005. As of November 30, 2005, DHS has not provided updated information. The CPO will continue to request updates.	OPEN
April 2004	DHS Headquarters	DHS has no trustworthy enterprise system to adequately track HIPAA Privacy training status. The statistics in the Health Care Compliance System (HCCS), which tracks HIPAA training throughout the County, does not coincide with the statistics provided by the hospitals. The current process for tracking HIPAA training is under review within the Department of Health Services (DHS). Recommend that DHS revise the process for maintaining the HCCS database to improve the quality of the actual training statistics.	DHS has temporarily remedied the training progress statistics data between CWTAPPS and HCCS and continues to study a migration path of its HIPAA training statistics to a new Learning Management System (LMS). The CPO will follow up on LMS progress through CIO.	OPEN
April 2004	DHS' Business Associate Agreements	OMC must have separate policy and procedures that are unique to a health plan and must also been viewed as a separate organization from DHS' health care operations.	Corrective action for these violations was requested no later than May 30, 2005. As of November 30, 2005, DHS has not provided updated information. The CPO will continue to request updates.	OPEN

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Origination Date	Department / Facility	Audits	Action	Status
May 2004	DHS' Public Health Centers (Central and Hollywood-Wilshire Health Centers within Service Planning Area 4)	Central Health Center had 3 of 62 workforce members did not completing the privacy training, based on the data in HCCS. Hollywood-Wilshire Health Center had 3 of 54 workforce members as not completing the privacy training, based on the data in HCCS.	On April 13, 2005, Public Health reported that it is in progress of correcting. As of November 30, 2005, DHS Public Health has not provided updated information. The CPO will continue to request updates.	OPEN
May 2004	DHS' Public Health Centers (Central and Hollywood-Wilshire Health Centers within Service Planning Area 4)	Various workforce members from both health centers that are nurses, physicians or medical records administrators are credited for only completing HIPAA Awareness training curriculum.	On April 13, 2005, Public Health reported that it is in progress of correcting which includes reassigning the appropriate level of training. As of November 30, 2005, DHS Public Health has not provided updated information. The CPO will continue to request updates.	OPEN
May 2004	DHS' Public Health Centers (Central and Hollywood-Wilshire Health Centers within Service Planning Area 4)	All of the computers sampled had outdated anti-virus software updates in which some were outdated over two years. Outdated anti-virus software cannot protect the PHI stored on the computers against malicious data disclosure, modification or destruction.	On April 13, 2005, Public Health reported that it is in progress of correcting in which all health centers will be in compliance by June 30, 2005. As of November 30, 2005, DHS Public Health has not provided updated information. The CPO will continue to request updates.	OPEN
May 2004	DHS' Public Health Centers (Central and Hollywood-Wilshire Health Centers within Service Planning Area 4)	The Central Health Center had no fire suppression system installed in the STD Medical Records' room. No reasonable fire prevention system is installed and, in the event of a fire, the records could be destroyed.	On April 13, 2005, Public Health reported that it will solicit services to install a stand-alone fire suppression system in the STD Medical Records Room. As of November 30, 2005, DHS Public Health has not provided updated information. The CPO will continue to request updates.	OPEN
May 2004	DHS' Public Health Centers (Central and Hollywood-Wilshire Health Centers within Service Planning Area 4)	All scanned computers had multiple unauthorized access vulnerabilities due to a lack of patch management support. Many of the available patches and service packs were not installed.	On April 13, 2005, Public Health reported that it is in progress of correcting. It has requisitioned software solutions to help mitigate the issues. As of November 30, 2005, DHS Public Health has not provided updated information. The CPO will continue to request updates.	OPEN